

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|----------------------------------|---|----------------------------------|
| AMHERST EXEMPTED VILLAGE |) | CASE NO. 1:07-cv-00920 |
| SCHOOL DISTRICT BOARD OF |) | |
| EDUCATION, |) | |
| |) | |
| Plaintiff, |) | MAGISTRATE JUDGE |
| |) | NANCY A. VECCHIARELLI |
| v. |) | |
| |) | |
| ALICE CALABRESE, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | REPORT AND RECOMMENDATION |
| |) | Docket #78 |

Pending before the court is the motion of plaintiff, Amherst Exempted Village School District Board of Education (“Amherst”), to dismiss with prejudice its claims against defendant Alice Calabrese (“Calabrese”). Doc. No. 78. Co-defendant Donald R. Menefee has not opposed this motion. For the following reasons the magistrate judge recommends that the motion be granted.

On February 13, 2008 Amherst filed a Notice of Dismissal of its claims against Calabrese pursuant to Fed. R. Civ. P. 41(a)(1). Doc. No. 72. As Calabrese had already filed an Answer in this matter, Amherst’s dismissal was necessarily pursuant to subsection (ii) of that rule. On February 20, 2008, the court construed Amherst’s dismissal as a motion to dismiss and denied it for failing to obtain a stipulation to the dismissal from all parties, as is required by Fed. R. Civ. P. 41(a)(1)(ii).

On February 20, 2008, Amherst filed a motion pursuant to Fed. R. Civ. P. 41(a)(2) to dismiss with prejudice its claims against defendant Alice Calabrese. The time has passed for defendant

Donald R. Menefee to object to dismissing Calabrese.¹ As there is no reason why Amherst's motion should be denied, the motion should be granted.

/s/ Nancy A. Vecchiarelli
U.S. MAGISTRATE JUDGE

Date: March 27, 2008

OBJECTIONS

Any objections to this Report and Recommendation must be filed with the Clerk of Courts within ten (10) days after being served with a copy of this Report and Recommendation. Failure to file objections within the specified time may waive the right to appeal the District Court's order. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See also Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).

¹ If the claims against Calabrese were dismissed, she would remain in this action as a third-party plaintiff. Calabrese has filed her own motion to dismiss herself as a defendant in this case. She has asked the court, however, for an opportunity to file pursuant to Fed. R. Civ. P. 11 a motion for sanctions against Amherst. As previously ordered, such a motion must be filed by April 6, 2008.